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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/002,190	11/28/2001	Myles A. Fisher	210271	2965

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PETER LOFFLER
P.O. BOX 1001
NICEVILLE, FL 32588-1001

EXAMINER

SLACK, NAKO N

ART UNIT	PAPER NUMBER
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3635

DATE MAILED: 02/09/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/002,190

Applicant(s)

FISHER, MYLES A.

Examiner

Naoko Slack

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 17 December 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-23 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 12-23 is/are allowed.
- 6) ☒ Claim(s) 1 and 4-11 is/are rejected.
- 7) ☒ Claim(s) 2 and 3 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 17 December 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 8.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Claims 1-23 remain pending. Claim 1 has been amended in Amendment A.

Drawings

The proposed Drawing correction to Figure 1 is approved.

Response to Amendment A

Amended claim 1 has been carefully considered in light of our discussion at interview on November 14, 2003. At interview, Applicant's representative pointed out the distinguishing feature of Applicant's invention over prior art of record: that the entire outer periphery of the baffle was *joined* to the body of the block at along substantially the entire seam (refer to Interview Summary Record, Paper #7). In Remarks of Amendment A, Applicant argues that prior art does not disclose a baffle "wherein the outer periphery is *attached* along substantially the entire seam" (page 6, line 10-11).

The amended claim language fails to specify that the baffle is joined or attached to the body along the seam but states that the baffle is "disposed" along the seam. The term "disposed" refers to a location or position of the baffle and does not describe the connection between the baffle and the block. As stated in the previous Office Action, prior art to Ashby et al. discloses a baffle that is disposed along the seam. Because amended claim 1 fails to read over the prior art of record as presented in the prior Office Action, claims 1 and 4-11 are rejected, and this action is made final.

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1 and 4-11 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1 and 8-15 of U.S. Patent No. 6,260,317 B1 to Fisher in view of US Patent 5,160,566A to Ashby et al.

Claim 1:

Fisher discloses a construction block comprising a resinous body formed from a pair of face portions with inwardly directed side portions, edge portions of the side portions in abutting relationship with and joined by a welded or adhesive seam defining an interior chamber; and a baffle having an outer periphery located within the interior space and disposed generally parallel with the pair of faces to form two separate areas within the interior chamber.

Fisher does not state that the baffle is located along the seam. However, Ashby et al. discloses a construction block comprising two separate halves permanently sealed

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at a peripheral seam (column 3, lines 8-12). A baffle is inserted and adhered parallel to the faces of the block (column 4, lines 7-11) at the seam of the faces. This construction offers thermal and sound insulation (column 2, lines 19-22) and prevents entrance of moisture (column 2, lines 9-14).

It would have been obvious for one of ordinary skill in the art at the time the invention was made to locate and attach Fisher's baffle at the seam as taught by Ashby et al. for the benefits of thermal and sound insulation, and prevention of moisture ingress, which are all concerns of Fisher (column 1, lines 27-30 and column 1, lines 31-40).

Claims 4-10:

Claims 4-10 of the present application are identical to claims 8-14 of Fisher.

Claim 11:

Claim 11 of the present application is identical to claim 15 of Fisher with the addition of a feature claimed in the alternative. Specifically, the phrase "or on one of the face portions of the block" is not a required feature, and Fisher's claim 15 completely satisfies the structural requirements of applicant's claim 11.

Allowable Subject Matter

As stated in the previous Office Action, Paper #6, Claims 2 and 3 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening

claims. As stated in the previous Office Action, claims 12-23 are allowed. Reasons for allowance were also provided in the previous Office Action.

FINAL

This action is a **final rejection** and is intended to close the prosecution of this application. Applicant's reply under 37 CFR 1.113 to this action is limited either to an appeal to the Board of Patent Appeals and Interferences or to an amendment complying with the requirements set forth below.

If applicant should desire to appeal any rejection made by the examiner, a Notice of Appeal must be filed within the period for reply identifying the rejected claim or claims appealed.

If applicant should desire to file an amendment, entry of a proposed amendment after final rejection cannot be made as a matter of right unless it merely cancels claims or complies with a formal requirement made earlier. Amendments touching the merits of the application which otherwise might not be proper may be admitted upon a showing a good and sufficient reasons why they are necessary and why they were not presented earlier.

A reply under 37 CFR 1.113 to a final rejection must include the appeal from, or cancellation of, each rejected claim. The filing of an amendment after final rejection, whether or not it is entered, does not stop the running of the statutory period for reply to the final rejection unless the examiner holds the claims to be in condition for allowance. Accordingly, if a Notice of Appeal has not been filed properly within the period for reply,

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or any extension of this period obtained under either 37 CFR 1.136(a) or (b), the application will become abandoned.

Contact Information


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Naoko Slack whose telephone number is (703) 305-0315. The examiner can normally be reached on Mon-Fri (6:00 am-2:30pm).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Carl D. Friedman can be reached on (703) 308-0839. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9326 for regular communications and (703) 872-9327 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1113.


NS

February 2, 2004


Carl D. Friedman
Supervisory Patent Examiner
Group 3600